

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VERONICA GARZA
Plaintiff,

V.

WAL-MART STORES TEXAS, LLC

Defendant.

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

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TO THE UNITED STATES DISTRICT COURT:

WAL-MART STORES TEXAS, LLC, (“Defendant” or “Walmart”) files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 and 1332.

I.
INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441, et seq., this civil action is removed from the 129th Judicial District Court, Harris County, where this matter was pending under Cause No. 2022-37667, in a matter styled *Veronica Garza v. Wal-Mart Stores Texas, LLC*, (the “State Court Action”).

II.
NATURE OF THE SUIT

2. This is a premises liability lawsuit in which Plaintiff alleges she slipped and fell at Walmart.

III.
TIMELINESS OF REMOVAL

3. Plaintiff commenced this lawsuit by filing its Original Petition on June 23, 2022. Defendant Walmart accepted service on June 28, 2022 through its agent, CT Corporation System.

4. Walmart now timely files this Notice of Removal within 30 days after it was served. 28 U.S.C. § 1446.

IV.
BASIS FOR REMOVAL JURISDICTION

5. Removal is proper under 28 U.S.C. §§ 1441 and 1332 because there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. At the time of the filing of this Petition, Plaintiff was, and is still, a citizen of Texas.

7. Plaintiff sued Wal-Mart Stores Texas, LLC. Defendant Wal-Mart Stores Texas, LLC is now and was at the time of filing of this action a Delaware Limited Liability Company with its principal place of business in Arkansas. The citizenship of an LLC is the same as the citizenship of all of its members. *Harvey v. Grey Wolf Drilling, Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). Wal-Mart Real Estate Business Trust is the sole member of Wal-Mart Stores Texas, LLC.

8. Wal-Mart Real Estate Business Trust is a statutory business trust organized under the laws of the State of Delaware with its principal place of business in Arkansas. The citizenship of a statutory trust is the citizenship of its members, which includes its shareholders. *Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct. 1012, 1016 (2016); *Bynane v. Bank of New York Mellon for CWMBS, Inc. Asset-Backed*

Certificates Series 2006-24, 866 F.3d 351, 358 (5th Cir. 2017); *U.S. Bank Tr., N.A. v. Dupre*, 615CV0558LEKTWD, 2016 WL 5107123, at *4 (N.D.N.Y. Sept. 20, 2016) (finding that a Delaware statutory trust “seems precisely like the type [of trust] considered by the Supreme Court in *Americold*”). The sole unit/shareholder of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co.

9. A corporation is ““a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.”” *MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 314 (5th Cir. 2019) (quoting 28 U.S.C. § 1332(c)(1)). Wal-Mart Property Co. is an incorporated entity under the laws of the State of Delaware with its principal place of business in Arkansas. Therefore, Wal-Mart Property Co. is a citizen of Delaware and Arkansas.

10. Accordingly, for diversity purposes, Defendant Wal-Mart Stores Texas, LLC is a citizen of Delaware and Arkansas.

11. Thus, this lawsuit is between citizens of different states, and there is complete diversity of citizenship between Plaintiff and Wal-Mart Stores Texas, LLC pursuant to 28 U.S.C. § 1332.

12. Plaintiff asserts in her Original Petition that she seeks monetary relief over Two Hundred and Fifty Dollars (\$250,000.00) and less than One Million Dollars (\$1,000,000.00). Thus, based on all information currently known by or available to Defendant, Plaintiff’s pleadings admit that the amount in controversy exceeds the jurisdictional minimum for removal to this Court.

V.

THIS NOTICE IS PROCEDURALLY CORRECT

13. Based on the aforementioned facts, the State Court Action may be removed to this Court by Defendant Wal-Mart Stores Texas, LLC in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Southern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy exceeds \$75,000, exclusive of interest and costs as specifically plead in the Petition.

14. Walmart has attached to this Notice of Removal the documents required by 28 U.S.C. § 1446(a) and Local Rule 81 as follows:

- A. All executed process in this case;
- B. Pleadings asserting causes of action and answers to those pleadings;
- C. All Orders signed by the State Judge (None);
- D. The docket Sheet in the State Court Action;
- E. An Index of matters being filed; and
- F. A list of all counsel of record.

15. Defendant is also filing with the Notice of Removal a completed Civil Cover Sheet and a Certificate of Interested Persons.

16. Defendant retains the right to supplement the jurisdictional allegations by affidavit, declaration, or otherwise should Plaintiff challenge the allegations in a motion to remand or other filing.

17. In accordance with 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to all parties and to the Clerk of the 129th Harris County District Court, where this matter was pending under Cause No. 20022-34667, in a matter styled *Veronica Garza v. Wal-Mart Stores Texas, LLC*. A jury trial was demanded in the State Court Action by Plaintiff.

18. Trial has not commenced in the 129th Harris County, Texas District Court.

VI.
CONCLUSION

19. Since diversity jurisdiction exists over Plaintiff's claim as set forth in Plaintiff's Original Petition, Defendant desires and is entitled to remove the lawsuit filed in the 129th Harris County, Texas, District Court, to the United States District Court for the Southern District of Texas, Houston Division.

WHEREFORE, Defendant Wal-Mart Stores Texas, LLC files this Notice of Removal pursuant to and in conformance with the statutory requirements, removes this action from the 129th Harris County, Texas District.

Respectfully submitted,
MEHAFFYWEBER, P.C.

By: /s/ Maryalyce W. Cox
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ATTORNEYS FOR DEFENDANT
WALMART STORES TEXAS, LLC

CERTIFICATE OF SERVICE

In addition to e-filing, this is to certify that a true and correct copy of the above and foregoing instrument has been forwarded by Certified Mail, return to receipt requested, to all counsel of record on this the 28th day of July, 2022 pursuant to both the Texas Rules of Civil Procedure and the Federal Rules of Civil Procedure. .

Maryalyce W. Cox
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